

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Louis Pericard

Application No: 10 / 616,665 Group No.: 3751  
Filed: July 10, 2003 Examiner: Khoa D. Huynh  
For: Means And Method For Filling Bag-On-Valve Aerosol Barrier Packs

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT  
BEFORE MAILING DATE OF EITHER A FINAL ACTION  
OR NOTICE OF ALLOWANCE (37 C.F.R. § 1.97(c))

NOTE: 37 C.F.R. 1.97: "(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by one of:

- (1) The statement specified in paragraph (e) of this section; or
- (2) The fee set forth in § 1.17(p)."

NOTE: "If a final action or notice of allowance is mailed in an application and later withdrawn, the application will be considered as not having had a final action or notice of allowance mailed for purposes of considering an information disclosure statement." Notice of April 20, 1992 (1138 O.G. 37-41, 39).

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**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

37 C.F.R. § 1.8(a)

☐ with sufficient postage as first class mail.

37 C.F.R. § 1.10 \*

☒ as "Express Mail Post Office to Addressee"

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**TRANSMISSION**

☐ facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_

Kathleen Coughlin Foster  
Signature

Date: March 18, 2005

Kathleen Coughlin Foster

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Transmittal of Information Disclosure Statement before Mailing Date of Either a Final Action Or Notice of Allowance [6-4]—page 1 of 3)

NOTE: 37 C.F.R. § 1.704(d): "A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable."

NOTE: "If information submitted during the period set forth in 37 C.F.R. 1.97(c) with a certification is used in a new ground of rejection on unamended claims, the next Office action will not be made final since in this situation it is clear that applicant has submitted the information to the office promptly after it has become known and the information is being submitted prior to a final determination on patentability by the Office. However, the information submitted with a certification can be used in a new ground of rejection and the next Office action made final, if the new ground of rejection was necessitated by amendment of the application by applicant. Where the information is submitted during this period with a fee, the examiner may use the information submitted, e.g., printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP 706.07(a). If a new ground of rejection is introduced that is neither necessitated by an amendment to the claims nor based on the information submitted with the fee set forth in 37 C.F.R. § 1.17(p), the Office action shall not be made final." Notice of April 20, 1992 (1138 O.G. 37-41, 39).

WARNING: "A petition for suspension of action to allow applicant time to submit an information disclosure statement will be denied as failing to present good and sufficient reasons, since 37 C.F.R. § 1.97 provides adequate recourse for the timely submission of prior art for consideration by the examiner." Notice of July 6, 1992 (1141 O.G. 63). But see § 103(b) and (c), limited suspension of action in a continued prosecution application (CPA) filed under § 1.53(d) and in a request for continued examination (RCE) under § 1.114.

WARNING: No extension of time can be had under 37 C.F.R. 1.136 (a) or (b) for filing an IDS. 37 C.F.R. 1.97(f).

### **TIME OF TRANSMITTAL OF ACCOMPANYING INFORMATION DISCLOSURE STATEMENT**

1. The information disclosure statement transmitted herewith is being filed **after** three months of the filing date of this national application or the date of entry of the national stage as set forth in § 1.491 in an international application or after the mailing date of the first Office action on the merits, whichever event occurred last but **before** the mailing date of either:
  - (1) a final action under § 1.113 or
  - (2) a notice of allowance under § 1.311,whichever occurs first.

### **STATEMENT OR FEE**

2. Accompanying this transmittal is

(check either A or B below)

A. ☐ a statement as specified in 37 C.F.R. § 1.97(e).

**OR**

B. ☒ the fee set forth in 37 C.F.R. § 1.17(p) for submission of an information disclosure statement under § 1.97(c). (\$180.00).

(Transmittal of Information Disclosure Statement before Mailing Date of Either a Final Action Or Notice of Allowance. [6-4]—page 2 of 3)

## FEE PAYMENT

(complete this item, if applicable)

3. Applicant elects the option to pay the fee set forth in 37 C.F.R. § 1.17(p) for submission of an information disclosure statement under § 1.97(c) (\$180.00).

Fee due \$ 180.00

## METHOD OF PAYMENT OF FEE

4.

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 180.00  
☐ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_  
☒ to Deposit Account No. 11-0854  
☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should *not* be included on this form as it may become public.

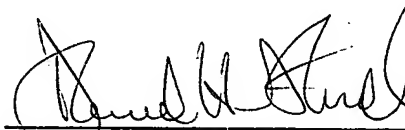
- ☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

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Tel. No.: (914) 961-9460

Customer No.:



SIGNATURE OF PRACTITIONER

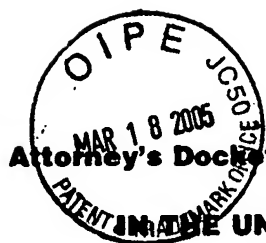
Daniel H. Steidl

(type or print name of practitioner)

KILGANNON & STEIDL

P.O. Address

85 Pondfield Road  
Bronxville, New York 10708



Attorney's Docket No. 11578.897

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patent application

of Louis Pericard

Inventor(s)

for Means And Method For Filling Bag-On-Valve Aerosol Barrier Packs

Title of invention

the specification of which is being transmitted herewith

OR

In re application of: Louis Pericard

Serial No.: 8 10/616,665

Group No.: 3751

Filed: July 10, 2003

Examiner: Khoa D. Huynh

For: Means And Method For Filling Bag-On-Valve Aerosol Barrier Packs

**Assistant Commissioner for Patents**

**Washington, D.C. 20231**

**INFORMATION DISCLOSURE STATEMENT**

**CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10**

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

☒ deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 P.O. Box 1450, Alexandria, VA 22313-1450.

**37 C.F.R. 1.8(a)**

**37 C.F.R. 1.10**

☐ with sufficient postage as first class mail.

☒ as "Express Mail Post Office to Addressee"

Mailing Label No. ER 403648740 US

**TRANSMISSION**

☐ transmitted by facsimile to the Patent and Trademark Office.

Kathleen Coughlin Foster

Signature

Kathleen Coughlin Foster

Date: March 18, 2005

(type or print name of person certifying)

(Information Disclosure Statement [6-1]—page 1 of 9)

NOTE: "An information disclosure statement shall be considered by the Office if filed by the applicant:

- (1) Within three months of the filing date of a national application;
- (2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application; or
- (3) Before the mailing date of a first Office action on the merits, whichever event occurs last."

37 C.F.R. 1.97(b).

NOTE: "Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." 37 C.F.R. 1.56(a).

"Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) each inventor named in the application;
- (2) each attorney or agent who prepares or prosecutes the application; and
- (3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application." 37 C.F.R. 1.56(c).

NOTE: The "duty as described in § 1.56 will be met so long as the information in question was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b) - (d) and 1.98 before issuance of the patent." Notice of January 9, 1992, 1135 O.G. 13 -25 at 17.

WARNING: "No information disclosure statement may be filed in a provisional application." 37 C.F.R. § 1.51(b).

### List of Sections Forming Part of This Information Disclosure Statement

The following sections are being submitted for this Information Disclosure Statement:

(check sections forming a part of this statement: discard unused sections  
and number pages consecutively)

1. ☒ Preliminary Statements
2. ☒ FORM PTO-1449 (PTO/SB/08A and 086)
3. ☐ Statement as to Information Not Found in Patents or Publications
4. ☐ Identification of Prior Application in Which Listed Information Was Already Cited  
and for Which No Copies Are Submitted or Need Be Submitted
5. ☐ Cumulative Patents or Publications
6. ☒ Copies of Listed Information Items Accompanying This Statement
7. ☒ Concise Explanation of Non-English Language Listed Information Items
  - 7A. ☐ EPO Search Report
  - 7B. ☐ English Language Version of EPO Search Report
8. ☒ Translation(s) of Non-English Language Documents See Section 7.
9. ☐ Concise Explanation of English Language Listed Information Items (Optional)
10. ☒ Identification of Person(s) Making This Information Disclosure Statement

(complete the following, if appropriate)

Sections \_\_\_\_\_, respectively, have been continued on ADDED PAGE(S).

NOTE: "Once the minimum requirements are met, the examiner has an obligation to consider the information." Notice of April 20, 1992 (1138 O.G. 37-41, 37).

## **Section 1. Preliminary statements**

Applicants submit herewith patents, publications or other information, of which they are aware that they believe may be material to the examination of this application, and in respect of which, there may be a duty to disclose.

The filing of this information disclosure statement shall not be construed as a representation that a search has been made (37 C.F.R. 1.97(g)), an admission that the information cited is, or is considered to be, material to patentability, or that no other material information exists.

The filing of this information disclosure statement shall not be construed as an admission against interest in any manner. Notice of January 9, 1992, 1135 O.G. 13-25, at 25.

## Section 2. Form PTO - 1449 (Modified) (PTO/SB/09A and 08B)

NOTE: With respect to the list required by paragraph (b) of 37 C.F.R. 1.98, the Notice of April 20, 1992 (1138 O.G. 37-41) points out that:

*"The list may not be incorporated into the specification but must be submitted in a separate paper. A separate list is required so that it is easy to confirm that applicant intends to submit an information disclosure statement, and because it provides a readily available checklist for the examiner to indicate which identified documents have been considered. A copy of a separate list will also provide a simple means of communication to applicant to indicate the listed documents that have been considered and those listed documents that have not been considered. Use of form PTO-1449, "Information Disclosure Citation, is encouraged."*

NOTE: *"An information disclosure statement may include two list[s] (and two certifications)) . . . in situations where some of the information listed was cited in a communication from a foreign patent office not more than three months prior to filing the statement and some was not, but was not known more than three months prior to filing the statement." Notice of April 20, 1992 (1138 O.G. 37-41, 40).*

NOTE: With respect to the examiner's consideration of the Information Disclosure Statement, the Notice of April 20, 1992 (1138 O.G. 37-41) states:

*"If information is listed in the specification rather than in a separate paper, or if the other content requirements \*\*\* are not complied with, the examiner will notify applicant in the next Office action that the information has not been considered. It should be noted, however, that no copy of a U.S. patent application is required to be submitted. \*\*\* Where a U.S. patent application is properly cited, the examiner should obtain access to that file within the Office.*

*"Examiners must consider all citations submitted in conformance with the rules and this section and place their initials adjacent [sic] the citations on a list or in the boxes provided on a form PTO-1449. If the citations are submitted on a list other than a form PTO-1449, the examiner may write "all considered" and his or her initials to indicate that all citations have been considered. If any of the citations are considered, a copy of the submitted list or form, as reviewed by the examiner, will be returned to the applicant with the next communication. The original copy of the form will be entered into the application file. The copy returned to applicant will serve both as acknowledgement of receipt of the information disclosure statement and as an indication that the references were considered by the examiner. Forms PTO-326 and PTOL-37 include a box to indicate the attachment of form PTO-1449.*

*"Information which complies with requirements as discussed in this section but which is in a non-English language will be considered in view of the concise explanation submitted \*\*\* and insofar as it is understood on its face, e.g., drawings, chemical formulas, in the same manner that non-English language information in Office search files is considered by examiners in conducting searches. The examiner need not have the information translated unless it appears to be necessary to do so. \*\*\* The examiner should not require that a translation be filed by applicant. The examiner should not make any comment such as that the non-English language information has only been considered to the extent understood, since this fact is inherent.*

*"Since information is required to be listed in a separate paper rather than in the specification, there is no need to mark "All checked" or "Checked" in the margin of a specification containing citations.*

*"If a statement fails to comply with the requirements as discussed in this section for an item of information, a line should be drawn through the citation to show that it has not been considered. The other items of information listed that do comply with the rules and this section will be considered by the examiner and will be appropriately initialed.*

\* \* \* \* \*

*"A citation listed on form PTO-1449 and considered by the examiner in accordance with this section will be printed on the patent. A citation listed in a separate paper, equivalent to but not on form PTO-1449, and considered by the examiner in accordance with this section will be printed on the patent if the list is on a separate sheet which is clearly identified as an information disclosure statement and the list lends itself to easy capture of the necessary information by the Office printing contractor, i.e., each item of information is listed on a single line, the lines are at least double-spaced from each other, the information is uniform in format for each listed item, the list includes a column for the examiner's initials to indicate that the information was considered. If a citation is not printed on the patent but has been considered by the examiner in accordance with this section, the patented file will reflect that fact . . . "*

FORM PTO-1449 (MODIFIED)

LIST OF PUBLICATIONS FOR  
APPLICANT'S INFORMATION  
DISCLOSURE STATEMENT

Atty Docket No: 11578.897  
Serial No: 10/616,665  
Applicant: Louis Pericard  
Filing Date: July 10, 2003  
Group: 3751

REFERENCE DESIGNATION

U.S. PATENT DOCUMENTS

EXAMINER					FILING DATE
INITIAL	DOCUMENT NO	DATE	NAME	CLASS/SUBCLASS	IF APPROPRIATE
_____	6,085,945	Jul 11, 2000	Fransen		
_____	6,039,306	Mar. 21, 2000	Pericard		
_____	5,730,326	Mar. 24, 1998	Kaeser		
_____	5,505,039	Apr. 09, 1996	Maier		
_____	5,211,316	May 18, 1993	Adalberto, et al.		
_____	4,441,634	Apr. 10, 1984	Meshberg		
_____	3,690,515	Sept. 12, 1972	Ewald		
_____	3,642,035	Feb. 15, 1972	Marand		
_____	3,612,361	Oct. 12, 1971	Ewald, et al.		
_____	3,593,889	Jul. 20, 1971	Prussin, et al.		
_____	3,568,888	Mar. 09, 1971	Baldoni, et al.		
_____	3,550,649	Dec. 29, 1970	Meshberg		
_____	3,528,461	Sept. 15, 1970	Grothoff		
_____	3,459,244	Aug. 05, 1969	Riccio		
_____	3,348,587	Oct. 24, 1967	Grothoff		
_____	3,179,132	Apr. 20, 1965	Focht		
_____	3,176,727	Apr. 06, 1965	Rousseau		

FOREIGN PATENT DOCUMENTS

EXAMINER					TRANSLATION	
INITIAL	DOCUMENT NO	DATE	COUNTRY	CLASS/SUBCLASS	YES	NO
_____	JP 59-113398		1984			
_____	UK 1 212 374		1970			

Examiner

Date Considered

**Examiner:** Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.



## Section 6. Copies of Listed Information Items Accompanying This Statement

*NOTE: 37 C.F.R. 1.98(a)(2) requires that any information disclosure statement filed under § 1.97 shall include: "A legible copy of: (1) Each U.S. and foreign patent; (ii) Each publication or that portion which caused it to be listed; and (iii) All other information or that portion which caused it to be listed, except that no copy of a U.S. patent application need be included . . ."*

*NOTE: The wording in § 1.98(a)(2)(iii) makes it clear that the requirement to submit a copy of each item of information listed in an information disclosure statement does not apply to the citation of a U.S. patent application. Notice of January 9, 1992, 1135 O.G. 13-25, at 14.*

Legible copies of all items listed in Form PTO-1449 (PTO/SB/08A and 08B) accompany this information statement.

*(complete the following, if applicable)*

- ☐ Exception(s) to above:
  - ☐ Items in prior application, from which an earlier filing date is claimed for this application, as identified in Section 4.
  - ☐ Cumulative patents or publications identified in Section 5.
  - ☒ Cited U.S. Patents, as identified in Section 2.

## **Section 7. Concise Explanation of Non-English Language Listed Information Items**

**NOTE:** "A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information of each patent, publication, or other information listed that is not in the English language shall be included in any information disclosure statement filed under § 1.97. The concise explanation may be either separate from the specification or incorporated therein." 37 C.F.R. 1.98(a)(3).

**NOTE:** "[T]he explanation required is limited to the relevance as understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information at the time the information is submitted to the Office." Notice of January 9, 1992, 1135 O.G. 13-25 at 14.

**NOTE:** "Where the information listed is not in the English language, but was cited in a search report by a foreign patent officer, the requirement for a concise explanation of relevance is satisfied by submitting an English language version of the search report." Notice of January 9, 1992, 1135 O.G. 13-25, at 14.

**NOTE:** "The concise explanation requirement for non-English language information may be met by submission of an English language version of the search report indicating the degree of relevance found by the foreign office." Notice of January 9, 1992, 1135 O.G. 13-25, at 20.

**WARNING:** "The requirement in § 1.98(a)(3) for a concise explanation of non-English language information would not be satisfied by a statement that a reference was cited in the prosecution of a parent application." Notice of January 9, 1992, 1135 O.G. 13-25 at 20 (emphasis added).

JP 59-113398:

See "Purpose" and "Constitution" on English language cover document of Japanese patent No. 59-113398.

## Section 8. Translation(s) of Non-English Language Documents

NOTE: "If a written English language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in § 1.56(c), a copy of the translation shall accompany the statement." 37 CFR 1.98(c).

NOTE: "The Office does not intend to require translations unless they have been reduced to writing and are actually translations of what is contained in the non-English language information. Applicants should note, however, that most examiners do not have the ability to understand information which is not in English and that the Office will not routinely translate information submitted in a non-English language. The examiner will consider the information insofar as it is understood on its face, e.g., drawings, chemical formulas, English language abstracts, but will not have the information translated unless it appears to be necessary to do so. Applicants are required to aid the examiner by complying with the requirements for a concise explanation in § 1.98(a)(3) for information submitted in a non-English language." Notice of January 9, 1992, 1135 O.G. 13-25, at 21.

NOTE: "The examiner will indicate that the non-English language information has been considered in the same manner as consideration is indicated for information submitted in English." Notice of April 20, 1992 (1138 O.G. 37-41, 41).

- ☐ Submitted herewith is an English translation of the following foreign language patents, publications or information or of those portions of those patents, publications or information considered to be material:

SEE SECTION 7.

(complete the following, if applicable)

- ☐ No English language translations of the foreign language patents, publications or information or parts thereof are readily available, except for those listed above.
- ☐ The following foreign language documents submitted are believed to be the equivalent or substantial equivalent of the English language documents identified below, which are also submitted herewith.

**Section 10. Identification of Person(s) Making THIS INFORMATION DISCLOSURE STATEMENT**

The person making this statement is

*(check each applicable item)*

- (a) ☐ the inventor(s) who signs below

\_\_\_\_\_  
**SIGNATURE OF INVENTOR**

\_\_\_\_\_  
*(type name of inventor who is signing)*

- (b) ☐ an individual associated with the filing and prosecution of this application (37 CFR 1.56(c))

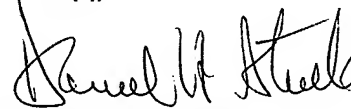
\_\_\_\_\_  
**SIGNATURE OF INVENTOR**

\_\_\_\_\_  
*(type name of inventor who is signing)*

- (c) ☒ the attorney who signs below on the basis of the information:

*(check each applicable item)*

- ☒ supplied by the inventor(s).  
☒ supplied by an individual associated with the filing and prosecution of this application. (37 CFR 1.56(c))  
☒ in the attorney's file.



\_\_\_\_\_  
**SIGNATURE OF ATTORNEY**

Daniel H. Steidl

\_\_\_\_\_  
*(type or print name of attorney)*

KILGANNON & STEIDL

\_\_\_\_\_  
**P.O. Address**

85 Pondfield Road

\_\_\_\_\_  
Bronxville, New York 10708

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